

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That the Seaboard System Railroad Company, hereinafter referred to as the Carrier, violated the Agreement, particularly but not limited to Section 3 of Appendix B, when on May 1, 1983 Carmen M. R. Welch, J. H. Starks and G. E. Hutton, hereinafter referred to as the Claimants, were relieved from an assignment for which they were called from the overtime board and were not allowed to complete the assignment when the work resumed the following day.

2. Accordingly, the Carrier should be ordered to compensate the Claimants for the additional amount that they would have earned had they been allowed to complete the assignment.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The instant dispute involves Appendix "B" Section 3 of the Agreement, which states in pertinent part:

"Section 3.

"In submitting application for assignment to either the Sunday-holiday or miscellaneous overtime board, the Employee will protect whatever assignment his turn on the overtime board calls for, if qualified."

The basic facts are undisputed. On Sunday, May 1, 1983, the Claimants were called at 5:00 A.M. from the Radnor Shop Miscellaneous Overtime Board to perform ground work for an outside Contractor (Steel City Crane Service) from Birmingham, Alabama to assist the Carriers Radnor Wrecker in cleaning a ten (10) car derailment about three miles outside of the Shop.

At 5:00 P.M. the same date, Claimants were released when the contractor suspended operations for the day; they returned to Radnor Shops, their home station and off-duty point and their names were rotated to the bottom of the Overtime Board.

When the Contractor resumed work at 5:30 A.M. on May 2, 1983, a new crew was called to work from the Radnor Shop Miscellaneous Overtime Board, who were on duty until 3:00 P.M. same date.

The Organization contends a violation of Section 3 of Appendix "B" when Claimants were not called back the following day to complete the assignment for which they were originally called.

Organization also contends Carrier has always in the past kept the same crew to clear a derailment even over a period of several days at a time and when it had to furnish lodging for such crews. The record shows that Claimants were only 3 miles from their home shop where they hold regular assignment and report to work five days a week.

Organization further contends Contractor's equipment remained at the scene clearly indicating the derailment was not cleared when the Claimants were released. Organization argues this constitutes a continuation of the same assignment. Since Claimants performed the work the first day, Organization maintains Claimants were qualified to continue the work the second day; that once they were out they should have stayed out.

Carrier asserts that it complied with the provisions of the Agreement when it went to the Miscellaneous Overtime Board for the next 3 new people on the list May 2, 1983. It cites Paragraph (1), Appendix "B" of the Agreement which states in pertinent part:

"All employees will be afforded an opportunity to participate in overtime work in the respective craft and class in which employed insofar as the character of the work and their qualifications permit."

Carrier also asserts that Claimants were rotated to the bottom of the Overtime Board in compliance with Section 4 of Appendix "B" which states in pertinent part:

"Section 4.

"Upon being placed on the overtime board, an employee will stand for service and be rotated in accordance with his standing on the overtime board, as provided in this agreement. Rotating the man assigned to the overtime board will be considered as meeting the requirements of Rule 11."

Carrier further asserts that the Organization did not and could not meet its burden of proof to show violation of Section 3 of Appendix "B", and that no evidence was presented to support that it acted contrary to past practice.

Regarding claims where Employees have not shown any violation of Rules on the part of the Carrier, Second Division Award No. 9895 and Third Division Award No. 21858 this Board held:

"In case after case decided by this Board, we have repeatedly ruled that in order to establish a right to relief in the statement of claim, the petitioner must firstly cite provisions of the agreement which prohibited carrier from acting in the manner which petitioner challenges and secondly the petitioner must show how carriers action violated the cited provisions of the contract. Unless there exists a contractual prohibition precluding carrier from taking the action disputed, we have no authority under the Railway Labor Act to find for the petitioner."

In the Board's Opinion the Organization has failed to meet its burden of proving violation of the Agreement or past practice.

Absent such showing, it is Carrier's prerogative as to how this matter will be handled.

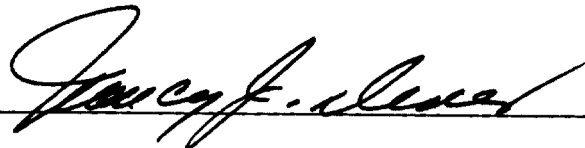
The Board concludes that Claimants were properly compensated for overtime work on Sunday, May 1, 1983. In accordance with all Agreement Rules, they did not stand for overtime call on Monday, May 2, 1983.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of September 1986.